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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,438	07/31/2001	Romelia Flores	BOC9-2000-0080(215)	4222
40987	7590	09/21/2005	EXAMINER	
AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188			CRAIG, DWIN M	
			ART UNIT	PAPER NUMBER
			2123	
DATE MAILED: 09/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/919,438

Applicant(s)

FLORES ET AL.

Examiner

Dwin M Craig

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-22 have been presented for reconsideration based on Applicants' amended claim language and arguments.

Response to Arguments

2. Applicants' arguments presented in the 6/9/2005 responses have been fully considered. The Examiner's response is as follows.

2.2 Regarding the Applicants' amending the Abstract, the Examiner thanks the Applicants' for amending the Abstract and the Examiner withdraws the earlier objection to the same.

2.3 Regarding the Applicants' amending the claim numbering in claim 8, the Examiner thanks the Applicants' for amending claim 8 and the Examiner withdraws the earlier objection to claim 8.

2.4 Regarding Applicants' arguments concerning the fact that the Conti and Reynolds references are unsuitable for rejection under the 35 USC § 103 (c) "*shield*" law.

The Examiner notes that Applicants' are correct, in that neither the *Conti* nor *Reynolds* references are suitable for rejection under 35 USC § 103(a). The Examiner withdraws the earlier 35 USC § 103(a) rejections of claims 10-12.

2.5 Applicants' have argued over the 35 USC § 102(a) rejections of claims 1, 9 and 15 on page(s) 12 and 13 of the 6/9/2005 responses. *Specifically Applicant argues,*

Pg. 12 [The claimed technique results in an automated environment designed for effective traffic management and testing of the same using simulated loads.]

The Examiner notes that when an Application is executing a *script* then an automated workload test is being performed. Figure 1 Item 12 Step 1 of the *Conti* reference teaches an automated design for effective traffic and testing of the same using simulated loads.

Pg. 13 [Conti fails to teach a workload driver as claimed.]

The Examiner notes that the *Conti* reference discloses the functional equivalent of a workload driver. The Examiner further notes that any system that generates a *simulated test* frame is going to have a program that produces and responds to simulated workload frames and that the *Conti* reference inherently discloses such a program.

Pg. 13 [Conti fails to teach a workload driver that translates work request into associated operations upon information contained within a configuration file.]

The *Conti* reference discloses performing translations, the Examiner notes that (*the* NetData macro is performing the functional equivalent to translating a simulated work request), and executing said computer operation in the e-business application server (Col. 9 lines 38-67, Col. 10 Lines 1-9).

Pg. 13 [Applicants claim that workload request is received and that a workload driver uses a configuration file to “look up” a workload response (“computer program commands” that are performed in the e-business server) that is associated with the workload request].

The Examiner withdraws the earlier prior art rejections based on the *Conti* reference because an updated search, based on Applicants’ amended claim language has revealed prior art references that better illustrates the invent concept of Applicants’ amended claims.

2.6 The previously applied 35 USC § 103(a) and 35 USC § 102(a) rejections of Applicants’ claims have been withdrawn.

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2.7 An updated search based on Applicants' arguments and amended claim language has revealed new art.

Claim Interpretation

3. The claim language has been given the broadest reasonable interpretation by the Examiner. For the purposes of Examination the Examiner has determined that, the claimed limitation "*placebo transaction*" is functionally equivalent to a "*simulated transaction*."

3.1 The Examiner notes that Merriam-Webster's Collegiate Dictionary, Tenth Edition discloses the following definition for the term "*Placebo*",

1. The Roman Catholic vespers for the dead.
2. A medication prescribed more for the mental relief of the patient than for its actual effect on a disorder.
3. An inert or innocuous substance used especially in controlled experiments testing the efficacy of another substance (as a drug). *Something tending to soothe.*

Although Applicant is permitted to be his or her own lexicographer, the Examiner respectfully suggests that Applicants' should change the current claim language from a "*placebo transaction work request*" to "*a simulated transaction work request*".

3.2 As regards the expressly claimed limitation of having a "*workload driver*" that reads a "*configuration file*" the Examiner notes that this is functionally the same as any program that generates simulated test frames using a script.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 9 and 15 and claims 7, 8, 21 and 22 are rejected under 35 USC 102(b) as being invented by another in view of “*Segue Software Announces Resource Monitoring of E-Business Applications with SilkMonitor*” Business/Technology Editors, Business Wire. New York: Oct. 25, 1999 pg. 1 *hereafter referred to as the Segue reference*.

4.1 As regards claims 1, 9 and 15 and using claims 1 as an example, the *Segue* reference discloses, “By simulating complex loads on Intel based servers, *Segue Software allows Intel to accurately depict the high levels of stress e-Business applications must withstand.*” And “*When implementing SilkMonitor, organizations can set system thresholds* (which is the same as programming a workload driver with a configuration file), *and alerts for maximum performance and scalability of an e-business application*” and “By simulating (which is the same as generating placebo transaction work requests), *complex internet workloads* (with the simulated test frames/placebo transactions), *on Intel-based servers, Segue Software allows Intel to accurately depict high levels of stress e-business applications must withstand*”.

4.2 As regards dependent claims 7, 8, 21 and 22, “*SilkMonitor’s platform-independent core (JAVA)* (the workload driver is a JAVA class) *allows users to easily monitor network segments with varying platforms* (varying platforms can be supported by translation) *from one console. Extensible agents can be easily installed on any server with a Java Virtual Machine*” (using a servlet running on the e-commerce application server, this passage infers the use of servlets and using JAVA classes).

4.3 As regards independent claim 9 and the requirement for automatic functioning as argued on page 13 of the 6/9/2005 response, *"once installed, the agents automatically register themselves and begin to collect performance data."* As regards the other expressly claimed limitations in independent claim 9 please see section 4.1.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-22 are rejected under 35 USC § 102(a) as being anticipated by "LoadRunner: The Industry Standard Load Testing Tool" by Mercury Interactive Inc. hereafter referred to as the *Mercury* reference.

5.1 As regards independent claims 1, 9 and 15 and using claim 15 as an example, the *Mercury* reference discloses, *forwarding the placebo transaction work request results in a load being applied to the e-business application server, forwarding a placebo work request to the e-business application server, wherein the placebo transaction work request results in a load being applied to the e-business application server; Applying a load for said placebo transaction work request resulting from said executing step to said e-business application server; "LoadRunner is a highly scalable, automated load testing solution that allows you to predict system behavior and optimize performance. LoadRunner stresses the entire enterprise system by emulating behavior of real users and employs real-time performance monitors to help you identify and isolate problems for faster resolution."* *Receiving said forwarded placebo transaction work request by a workload driver; "LoadRunner enables you to easily create system load with its virtual User Generator. This engine generates agents, or virtual users, that imitate the business processes and behavior of real users."* *Said workload driver automatically translating said forwarded placebo*

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transaction work request into a computer program operation to be performed in the e-business application server, wherein the automatically translating step is determined by configuration information contained within a configuration file, said configuration file associating computer program commands with transaction work requests; “It accomplishes this by capturing business processes, such as order entry or flight reservation, and then translating them into test scripts.”

5.1 As regards dependent claims 7, 8, 21 and 22 the *Mercury* reference discloses supporting JAVA. “Test Enterprise Java Beans.”

5.2 As regards dependent claims 2 the *Mercury* reference teaches translation, “It accomplishes this by capturing business processes, such as order entry or flight reservation, and then translating them into test scripts.”

5.3 As regards dependent claims 3-6, 11-14 and 16-20 the *Mercury* reference discloses, “After creating test scripts with the Virtual User Generator, you can begin parameterizing them. Parameterization allows with different sets of real-life data in order to mirror your enterprise workload. *et. seq.*” The Examiner notes that in order to parameterize the data, it is *inherent* that the different simulated data frames be provided with unique user I.D.s as expressly claimed by the applicants.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an

international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1, 2, 9 and 15 are rejected under 35 USC 102(e) as being anticipated by US Patent 6,360,332 Weinberg et al.

6.1 As regards independent claims 1, 9 and 15 and using independent claim 1 as an example, the *Weinberg et al.* reference teaches, A method for simulating application workload on an e-business application server hosting a plurality of e-business application programs, (Figure 6C and the description of this Figure and Col. 2 lines 23-39 and *et seq.*), comprising: forwarding a placebo transaction work request to the e-business application server, wherein the placebo transaction work request results in a load being applied to the e-business application server; (Col. 20 line 65 “a load-testing module 624” and *et seq.*), applying a load for said placebo transaction work request resulting from said executing step to said e-business application server; (Col. 22 lines 50-53 “The replay module 614 interacts with the front 620 to send commands to the transactional server in accordance with the testcase that is selected by the user.” *et seq.*). The *Weinberg et al.* reference further discloses, receiving said forwarded placebo transaction work request by a workload driver; (Col. 20 line 65 “a load-testing module 624” and *et seq.*), said workload driver automatically translating said forwarded placebo transaction work request into a computer program operation to be performed in the e-business server application server, (), wherein said automatically translating step is determined by configuration information contained within a configuration file, said configuration file associating computer commands with transaction work requests; (Col. 23 lines 4-24 and Col. 25 lines 62-67 and Col.

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24 lines 1-16 and *et seq.*), and executing said program operation in the e-business application server (Col. 23 lines 25-38, *et seq.*).

6.2 As regards dependent claim 2 the *Weinberg et al.* reference discloses automated operation (Col. 6 lines 15-23).

Conclusion

7. The Examiner has provided a number of US Patents that are believed to be applicable to Applicant's expressly claimed limitations.

7.1 Claims 1-22 have been presented for Examination based on Applicants' arguments and amended claim language. Applicants' arguments have been considered and the previous prior art rejections have been withdrawn. New prior art rejections have been presented in this Office Action.

7.2 This Office Action is Non-Final.

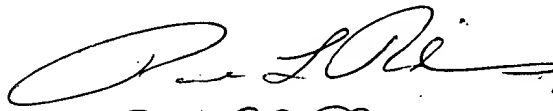
7.3 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwin M. Craig whose telephone number is (571) 272-3710. The examiner can normally be reached on 10:00 - 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo P. Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DMC

 9/15/05
Paul L. Rodriguez
Primary Examiner
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